

By: Thompson of Harris

H.B. No. 2912

A BILL TO BE ENTITLED

AN ACT

relating to decedents' estates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 21.005, Estates Code, as effective January 1, 2014, is amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, and is further amended to read as follows:

Sec. 21.005. APPLICABILITY OF CERTAIN LAWS. (a) Notwithstanding Section 21.002(b) of this code and Section 311.002, Government Code:

(1) Section 311.032(c), Government Code, applies to Subtitle [Subtitles] X [and Y], Title 2, and Subtitles Y and Z, Title 3; and

(2) Sections 311.005(4) and 311.012(b) and (c), Government Code, apply to Subtitle [Subtitles] X [and Y], Title 2, and Subtitles Y and Z, Title 3.

(b) Chapter 132, Civil Practice and Remedies Code, does not apply to Subchapter C, Chapter 251.

SECTION 2. Notwithstanding the transfer of Section 2, Texas Probate Code, to the Estates Code and redesignation as Section 2 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, Subsection (e), Section 2, Texas Probate Code, is transferred to Chapter 32, Estates Code, redesignated as Subsection (d), Section

1 32.001, Estates Code, and amended to read as follows:

2 (d) [~~(e) Nature of Proceeding.~~] The administration of the  
3 estate of a decedent, from the filing of the application for probate  
4 and administration, or for administration, until the decree of  
5 final distribution and the discharge of the last personal  
6 representative, shall be considered as one proceeding for purposes  
7 of jurisdiction. The entire proceeding is a proceeding in rem.

8 SECTION 3. Section 32.006, Estates Code, as effective  
9 January 1, 2014, is amended to read as follows:

10 Sec. 32.006. JURISDICTION OF STATUTORY PROBATE COURT WITH  
11 RESPECT TO TRUSTS AND POWERS OF ATTORNEY. In a county in which  
12 there is a statutory probate court, the statutory probate court has  
13 jurisdiction of:

- 14 (1) an action by or against a trustee;
- 15 (2) an action involving an inter vivos trust,  
16 testamentary trust, or charitable trust;
- 17 (3) an action by or against an agent or former agent  
18 under a power of attorney arising out of the agent's performance of  
19 the duties of an agent; and
- 20 (4) an action to determine the validity of a power of  
21 attorney or to determine an agent's rights, powers, or duties under  
22 a power of attorney.

23 SECTION 4. Section 51.203(c), Estates Code, as effective  
24 January 1, 2014, is amended to read as follows:

25 (c) At the expiration of the 10-day period prescribed by  
26 Subsection (a):

- 27 (1) [~~commission may issue for taking~~] the depositions

1 for which the notice was posted may be taken; and

2 (2) the judge may file cross-interrogatories if no  
3 person appears.

4 SECTION 5. Section 53.104, Estates Code, as effective  
5 January 1, 2014, is amended to read as follows:

6 Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM. (a) Except  
7 as provided by Section 202.009(b), the judge of a probate court may  
8 appoint an attorney ad litem in any probate proceeding to represent  
9 the interests of any person, including:

10 (1) a person who has a legal disability under state or  
11 federal law;

12 (2) a nonresident;

13 (3) an unborn or unascertained person; [~~or~~]

14 (4) an unknown heir;

15 (5) a missing heir; or

16 (6) an unknown or missing person for whom cash is  
17 deposited into the court's registry under Section 362.011.

18 (b) An attorney ad litem appointed under this section is  
19 entitled to reasonable compensation for services provided in the  
20 amount set by the court. The court shall:

21 (1) tax the compensation as costs in the probate  
22 proceeding and order the compensation to be paid out of the estate  
23 or by any party at any time during [~~to be taxed as costs in~~] the  
24 proceeding; or

25 (2) for an attorney ad litem appointed under  
26 Subsection (a)(6), order that the compensation be paid from the  
27 cash on deposit in the court's registry as provided by Section

1 362.011.

2 SECTION 6. Section 102.004, Estates Code, as effective  
3 January 1, 2014, is amended to read as follows:

4 Sec. 102.004. LIABILITY OF HOMESTEAD FOR DEBTS. If the  
5 decedent was survived by a spouse or minor child, the [~~The~~]  
6 homestead is not liable for the payment of any of the debts of the  
7 estate, other than:

8 (1) purchase money for the homestead;

9 (2) taxes due on the homestead;

10 (3) work and material used in constructing  
11 improvements on the homestead if the requirements of Section  
12 50(a)(5), Article XVI, Texas Constitution, are met;

13 (4) an owelty of partition imposed against the  
14 entirety of the property by a court order or written agreement of  
15 the parties to the partition, including a debt of one spouse in  
16 favor of the other spouse resulting from a division or an award of a  
17 family homestead in a divorce proceeding;

18 (5) the refinance of a lien against the homestead,  
19 including a federal tax lien resulting from the tax debt of both  
20 spouses, if the homestead is a family homestead, or from the tax  
21 debt of the decedent;

22 (6) an extension of credit on the homestead if the  
23 requirements of Section 50(a)(6), Article XVI, Texas Constitution,  
24 are met; or

25 (7) a reverse mortgage.

26 SECTION 7. Section 111.051, Estates Code, as effective  
27 January 1, 2014, is amended by amending Subdivision (1) and adding

1 Subdivision (1-a) to read as follows:

2 (1) "Contracting third party" means a financial  
3 institution, insurance company, plan custodian, plan  
4 administrator, or other person who is a party to an account  
5 agreement, insurance contract, annuity contract, retirement  
6 account, beneficiary designation, or other similar contract the  
7 terms of which control whether a nontestamentary transfer has  
8 occurred or to whom property passes as a result of a possible  
9 nontestamentary transfer. The term does not include a person who  
10 is:

11 (A) an owner of the property subject to a  
12 possible nontestamentary transfer; or

13 (B) a possible recipient of the property subject  
14 to a possible nontestamentary transfer.

15 (1-a) "Employees' trust" means:

16 (A) a trust that forms a part of a stock-bonus,  
17 pension, or profit-sharing plan under Section 401, Internal Revenue  
18 Code of 1954 (26 U.S.C. Section 401 (1986));

19 (B) a pension trust under Chapter 111, Property  
20 Code; and

21 (C) an employer-sponsored benefit plan or  
22 program, or any other retirement savings arrangement, including a  
23 pension plan created under Section 3, Employee Retirement Income  
24 Security Act of 1974 (29 U.S.C. Section 1002 (1986)), regardless of  
25 whether the plan, program, or arrangement is funded through a  
26 trust.

27 SECTION 8. Subchapter B, Chapter 111, Estates Code, is

1 amended by adding Section 111.054 to read as follows:

2 Sec. 111.054. APPLICATION OF STATE LAW TO CERTAIN  
3 NONTESTAMENTARY TRANSFERS. (a) This section applies if more than  
4 50 percent of the:

5 (1) money in an account at a financial institution, in  
6 a retirement account, or in another similar arrangement is owned,  
7 immediately before a possible nontestamentary transfer of the  
8 money, by one or more persons domiciled in this state; or

9 (2) benefits due under an insurance contract, annuity  
10 contract, beneficiary designation, or other similar arrangement  
11 are owned, immediately before a possible nontestamentary transfer  
12 of the benefits, by one or more persons domiciled in this state.

13 (b) Notwithstanding a choice of law or other contractual  
14 provision in an agreement prepared or provided by a contracting  
15 third party, Texas law applies to determine:

16 (1) whether a nontestamentary transfer of money or  
17 benefits described by Subsection (a) has occurred; and

18 (2) the ownership of the money or benefits following a  
19 possible nontestamentary transfer.

20 (c) Notwithstanding a choice of law or other contractual  
21 provision in an agreement prepared or provided by a contracting  
22 third party, any person, including a personal representative, who  
23 is asserting an ownership interest in money or benefits described  
24 by Subsection (a) subject to a possible nontestamentary transfer  
25 shall have access to the courts of this state for a judicial  
26 determination of:

27 (1) whether a nontestamentary transfer of the money or

1 benefits has occurred; or

2 (2) the ownership of the money or benefits following a  
3 possible nontestamentary transfer.

4 (d) Subsections (a), (b), and (c) do not apply to an  
5 obligation:

6 (1) owed by a party to the contracting third party; or

7 (2) owed by the contracting third party to a party.

8 (e) This section applies to a community property  
9 survivorship agreement governed by Chapter 112 and a multiple-party  
10 account governed by Chapter 113.

11 SECTION 9. Section 201.001, Estates Code, as effective  
12 January 1, 2014, is amended by amending Subsections (f) and (g) and  
13 adding Subsections (i), (j), and (k) to read as follows:

14 (f) If none of the kindred described by Subsections (b)-(e)  
15 survive the person, but the person is survived by a grandparent or a  
16 descendant of a grandparent, the person's estate shall be divided  
17 into two moieties, with:

18 (1) one moiety passing to the person's paternal  
19 kindred as provided by Subsection (g); and

20 (2) one moiety passing to the person's maternal  
21 kindred as provided by Subsection (h).

22 (g) The moiety passing to the person's paternal kindred  
23 passes in the following order:

24 (1) if both paternal grandparents survive the person,  
25 equal portions pass to the person's paternal grandfather and  
26 grandmother;

27 (2) if only the person's paternal grandfather or

1 grandmother survives the person, the person's estate shall:

2 (A) be divided into two equal portions, with:

3 (i) one portion passing to the surviving  
4 grandparent; and

5 (ii) one portion passing to the descendants  
6 of the deceased grandparent; or

7 (B) pass entirely to the surviving grandparent if  
8 no descendant of the deceased grandparent survives the person; and

9 (3) if neither the person's paternal grandfather nor  
10 grandmother survives the person, the moiety passing to the  
11 decedent's paternal kindred passes to the descendants of the  
12 person's paternal grandfather and grandmother [~~, and so on without~~  
13 ~~end, passing~~] in like manner [~~to the nearest lineal ancestors and~~  
14 ~~their descendants~~].

15 (i) If none of the kindred described by Subsections (b)-(e)  
16 survive the person and there is no surviving paternal grandparent  
17 or descendant of a paternal grandparent or, in the alternative,  
18 there is no surviving maternal grandparent or descendant of a  
19 maternal grandparent, the entire estate passes to the decedent's  
20 kindred on the side with the surviving grandparent or descendant of  
21 a grandparent in the manner provided for a moiety under Subsection  
22 (g) or (h).

23 (j) If none of the kindred described by Subsections (b)-(i)  
24 survive the person, the person's estate escheats under Chapter 71,  
25 Property Code.

26 (k) The limitation of heirs to grandparents and their  
27 descendants provided in this section does not apply to a gift in a

1 written instrument to a person's heirs, unless the instrument  
2 provides otherwise.

3 SECTION 10. Section 201.051, Estates Code, as effective  
4 January 1, 2014, is amended to read as follows:

5 Sec. 201.051. MATERNAL INHERITANCE. For purposes of  
6 inheritance, a child is the child of the child's biological or  
7 adopted mother, and the child and the child's issue shall inherit  
8 from the child's mother and the child's maternal kindred, both  
9 descendants, ascendants, and collateral kindred in all degrees, and  
10 they may inherit from the child and the child's issue. However, if a  
11 child has intended parents, as defined by Section 160.102, Family  
12 Code, under a gestational agreement validated under Subchapter I,  
13 Chapter 160, Family Code, the child is the child of the intended  
14 mother and not the biological mother or gestational mother unless  
15 the biological mother is also the intended mother.

16 SECTION 11. Section 201.052, Estates Code, as effective  
17 January 1, 2014, is amended by adding Subsection (a-1) and amending  
18 Subsection (b) to read as follows:

19 (a-1) Notwithstanding Subsection (a), if a child has  
20 intended parents, as defined by Section 160.102, Family Code, under  
21 a gestational agreement validated under Subchapter I, Chapter 160,  
22 Family Code, the child is the child of the intended father and not  
23 the biological father unless the biological father is also the  
24 intended father.

25 (b) A child described by Subsection (a) or (a-1) and the  
26 child's issue shall inherit from the child's father and the child's  
27 paternal kindred, both descendants, ascendants, and collateral

1 kindred in all degrees, and they may inherit from the child and the  
2 child's issue.

3 SECTION 12. Subchapter A, Chapter 202, Estates Code, as  
4 effective January 1, 2014, is amended by adding Section 202.0025 to  
5 read as follows:

6 Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH.  
7 Notwithstanding Section 16.051, Civil Practice and Remedies Code, a  
8 proceeding to declare heirship of a decedent may be brought at any  
9 time after the decedent's death.

10 SECTION 13. Section 202.004, Estates Code, as effective  
11 January 1, 2014, is amended to read as follows:

12 Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO  
13 DECLARE HEIRSHIP. A proceeding to declare heirship of a decedent  
14 may be commenced and maintained under a circumstance specified by  
15 Section 202.002 by:

16 (1) the personal representative of the decedent's  
17 estate;

18 (2) a person claiming to be a [~~secured~~] creditor or the  
19 owner of all or part of the decedent's estate;

20 (3) if the decedent was a ward with respect to whom a  
21 guardian of the estate had been appointed, the guardian of the  
22 estate, provided that the proceeding is commenced and maintained in  
23 the probate court in which the proceedings for the guardianship of  
24 the estate were pending at the time of the decedent's death;

25 (4) a party seeking the appointment of an independent  
26 administrator under Section 401.003; or

27 (5) the trustee of a trust holding assets for the

1 benefit of a decedent.

2 SECTION 14. Section 202.009, Estates Code, as effective  
3 January 1, 2014, is amended to read as follows:

4 Sec. 202.009. ATTORNEY AD LITEM [~~REPRESENTATION OF~~  
5 ~~INTERESTS OF CERTAIN PERSONS~~]. (a) ~~The~~ [If it appears to the court  
6 ~~in a proceeding to declare heirship that there is or may be a living~~  
7 ~~heir whose name or whereabouts is unknown, or that a defendant is an~~  
8 ~~incapacitated person, the] court shall [~~may~~] appoint an attorney ad  
9 litem in a proceeding to declare heirship [~~or guardian ad litem~~] to  
10 represent the interests of heirs whose names or locations are  
11 unknown [~~that person. The court may not appoint an attorney ad~~  
12 ~~litem or guardian ad litem unless the court finds that the~~  
13 ~~appointment is necessary to protect the interests of the living~~  
14 ~~heir or incapacitated person]~~.~~

15 (b) The court may expand the appointment of the [~~shall~~  
16 ~~appoint an]~~ attorney ad litem appointed under Subsection (a) to  
17 include representation of an heir who is an incapacitated person on  
18 a finding that the appointment is necessary to protect the  
19 interests of the heir [~~to represent the interests of unknown~~  
20 ~~heirs]~~.

21 SECTION 15. Section 202.056, Estates Code, as effective  
22 January 1, 2014, is amended to read as follows:

23 Sec. 202.056. WAIVER OF SERVICE OF CITATION [~~ON CERTAIN~~  
24 ~~PERSONS NOT PERMITTED~~]. A parent, managing conservator, guardian,  
25 attorney ad litem, or guardian ad litem of a minor distributee who:

26 (1) is younger than 12 years of age [~~or older, but~~  
27 ~~younger than 19 years of age,~~] may [~~not~~] waive citation required by

1 this subchapter to be served on the distributee; and

2 (2) is 12 years of age or older may not waive citation  
3 required by this subchapter to be served on the distributee.

4 SECTION 16. Subchapter B, Chapter 202, Estates Code, as  
5 effective January 1, 2014, is amended by adding Section 202.057 to  
6 read as follows:

7 Sec. 202.057. AFFIDAVIT OF SERVICE OF CITATION. (a) A  
8 person who files an application under Section 202.005 shall file  
9 with the court:

10 (1) a copy of any citation required by this subchapter  
11 and the proof of delivery of service of the citation; and

12 (2) an affidavit sworn to by the applicant or a  
13 certificate signed by the applicant's attorney stating:

14 (A) that the citation was served as required by  
15 this subchapter;

16 (B) the name of each person to whom the citation  
17 was served, if the person's name is not shown on the proof of  
18 delivery; and

19 (C) the name of each person who waived citation  
20 under Section 202.056.

21 (b) The court may not render a judgment in the proceeding to  
22 declare heirship under Subchapter E until the applicant files the  
23 affidavit required by this section.

24 SECTION 17. Section 202.151, Estates Code, as effective  
25 January 1, 2014, is amended to read as follows:

26 Sec. 202.151. [~~WRITTEN~~] EVIDENCE IN PROCEEDING TO DECLARE  
27 HEIRSHIP. (a) The court may require that [~~all or~~] any testimony

1 ~~[part of the evidence]~~ admitted as evidence in a proceeding to  
2 declare heirship be [+

3 ~~[(1)]~~ reduced to writing and subscribed and sworn to  
4 by the witnesses, respectively [+ and

5 ~~[(2) filed in the proceeding and recorded in the~~  
6 ~~judge's probate docket].~~

7 (b) Testimony in a proceeding to declare heirship must be  
8 taken in open court or by deposition under the Texas Rules of Civil  
9 Procedure.

10 SECTION 18. Section 253.001, Estates Code, as effective  
11 January 1, 2014, is amended by adding Subsection (c) to read as  
12 follows:

13 (c) Any portion of a court order that purports to prohibit a  
14 person from executing a new will or a codicil to an existing will is  
15 void and may be disregarded without penalty or sanction of any kind.

16 SECTION 19. The heading to Section 256.052, Estates Code,  
17 as effective January 1, 2014, is amended to read as follows:

18 Sec. 256.052. CONTENTS OF APPLICATION FOR PROBATE OF  
19 ~~[WRITTEN]~~ WILL ~~[GENERALLY]~~.

20 SECTION 20. Section 256.052(a), Estates Code, as effective  
21 January 1, 2014, is amended to read as follows:

22 (a) An application for the probate of a ~~[written]~~ will must  
23 state and aver the following to the extent each is known to the  
24 applicant or can, with reasonable diligence, be ascertained by the  
25 applicant:

- 26 (1) each applicant's name and domicile;  
27 (2) the testator's name, domicile, and, if known, age,

1 on the date of the testator's death;

2 (3) the fact, time, and place of the testator's death;

3 (4) facts showing that the court with which the  
4 application is filed has venue;

5 (5) that the testator owned property, including a  
6 statement generally describing the property and the property's  
7 probable value;

8 (6) the date of the will;

9 (7) the name, state of residence, and residence or  
10 business address of the [~~+~~  
11 [~~(A)~~ any] executor named in the will or other [~~+~~  
12 ~~if no executor is named, of the~~] person to whom the applicant  
13 desires that letters be issued; [~~and~~

14 (8) the name of [~~(B)~~] each subscribing witness to the  
15 will, if any;

16 (9) [~~(8)~~] whether one or more children born to or  
17 adopted by the testator after the testator executed the will  
18 survived the testator and, if so, the name of each of those  
19 children;

20 (10) [~~(9)~~] whether a marriage of the testator was ever  
21 dissolved after the will was made and, if so, when and from whom;

22 (11) [~~(10)~~] whether the state, a governmental agency  
23 of the state, or a charitable organization is named in the will as a  
24 devisee; and

25 (12) [~~(11)~~] that the executor named in the will, the  
26 applicant, or another person to whom the applicant desires that  
27 letters be issued is not disqualified by law from accepting the

1 letters.

2 SECTION 21. The heading to Section 256.053, Estates Code,  
3 as effective January 1, 2014, is amended to read as follows:

4 Sec. 256.053. FILING OF [~~WRITTEN~~] WILL WITH APPLICATION FOR  
5 PROBATE GENERALLY REQUIRED.

6 SECTION 22. Section 256.053(a), Estates Code, as effective  
7 January 1, 2014, is amended to read as follows:

8 (a) An applicant for the probate of a [~~written~~] will shall  
9 file the will with the application if the will is in the applicant's  
10 control.

11 SECTION 23. Section 256.054, Estates Code, as effective  
12 January 1, 2014, is amended to read as follows:

13 Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO  
14 [~~WRITTEN~~] WILL IS PRODUCED. In addition to the requirements for an  
15 application under Section 256.052, if an applicant for the probate  
16 of a [~~written~~] will cannot produce the will in court, the  
17 application must state:

18 (1) the reason the will cannot be produced;

19 (2) the contents of the will, as far as known; and

20 (3) the name, age, marital status, and address, if  
21 known, and the relationship to the testator, if any, of:

22 (A) each devisee;

23 (B) each person who would inherit as an heir of  
24 the testator in the absence of a valid will; and

25 (C) in the case of partial intestacy, each heir  
26 of the testator.

27 SECTION 24. Section 256.152(c), Estates Code, as effective

1 January 1, 2014, is amended to read as follows:

2 (c) As an alternative to Subsection (b) [~~For purposes of~~  
3 ~~Subsection (b)~~], a will executed in another state or a foreign  
4 country is considered self-proved without further evidence of the  
5 law of the other state or foreign country if the will, or an  
6 affidavit of the testator and attesting witnesses attached or  
7 annexed to the will, provides that:

8 (1) the testator declared that the testator signed the  
9 instrument as the testator's will, the testator signed it willingly  
10 or willingly directed another to sign for the testator, the  
11 testator executed the will as the testator's free and voluntary act  
12 for the purposes expressed in the instrument, the testator is of  
13 sound mind and under no constraint or undue influence, and the  
14 testator is eighteen years of age or over or, if under that age, was  
15 or had been lawfully married, or was then a member of the armed  
16 forces of the United States, an auxiliary of the armed forces of the  
17 United States, or the United States Maritime Service; and

18 (2) the witnesses declared that the testator signed  
19 the instrument as the testator's will, the testator signed it  
20 willingly or willingly directed another to sign for the testator,  
21 each of the witnesses, in the presence and hearing of the testator,  
22 signed the will as witness to the testator's signing, and to the  
23 best of their knowledge the testator was of sound mind and under no  
24 constraint or undue influence, and the testator was eighteen years  
25 of age or over or, if under that age, was or had been lawfully  
26 married, or was then a member of the armed forces of the United  
27 States, an auxiliary of the armed forces of the United States, or

1 the United States Maritime Service.

2 SECTION 25. Section 256.153, Estates Code, as effective  
3 January 1, 2014, is amended to read as follows:

4 Sec. 256.153. PROOF OF EXECUTION OF ~~[AUTHORIZED METHODS OF~~  
5 ~~PROVING]~~ ATTESTED ~~[WRITTEN]~~ WILL. (a) An attested ~~[written]~~ will  
6 produced in court that is not self-proved as provided by this title  
7 may be proved in the manner provided by this section.

8 (b) A will described by Subsection (a) may be proved by the  
9 sworn testimony or affidavit of one or more of the subscribing  
10 witnesses to the will taken in open court.

11 (c) If all the witnesses to a will described by Subsection  
12 (a) are nonresidents of the county or the witnesses who are  
13 residents of the county are unable to attend court, the will may be  
14 proved:

15 (1) by the sworn testimony of one or more of the  
16 witnesses by written or oral deposition taken in accordance with  
17 the provisions of the Texas Rules of Civil Procedure relating to  
18 written or oral depositions ~~[in the same manner and under the same~~  
19 ~~rules as depositions are taken in other civil actions];~~

20 (2) if no opposition in writing to the will is filed on  
21 or before the date set for the hearing on the will, by the sworn  
22 testimony or affidavit of two witnesses taken in open court, or by  
23 deposition as provided by Subdivision (1), to the signature or the  
24 handwriting evidenced by the signature of:

25 (A) one or more of the attesting witnesses; or

26 (B) the testator, if the testator signed the

27 will; or

1           (3) if it is shown under oath to the court's  
2 satisfaction that, after a diligent search was made, only one  
3 witness can be found who can make the required proof, by the sworn  
4 testimony or affidavit of that witness taken in open court, or by  
5 deposition as provided by Subdivision (1), to a signature, or the  
6 handwriting evidenced by a signature, described by Subdivision (2).

7           (d) If none of the witnesses to a will described by  
8 Subsection (a) are living, or if each of the witnesses is a member  
9 of the armed forces or the armed forces reserves of the United  
10 States, an auxiliary of the armed forces or armed forces reserves,  
11 or the United States Maritime Service and is beyond the court's  
12 jurisdiction, the will may be proved:

13           (1) by two witnesses to the handwriting of one or both  
14 of the subscribing witnesses to the will or the testator, if the  
15 testator signed the will, by:

16           (A) sworn testimony or affidavit taken in open  
17 court; or

18           (B) written or oral deposition taken in  
19 accordance with the provisions of the Texas Rules of Civil  
20 Procedure relating to written or oral depositions [~~in the same~~  
21 ~~manner and under the same rules as depositions are taken in other~~  
22 ~~civil actions~~]; or

23           (2) if it is shown under oath to the court's  
24 satisfaction that, after a diligent search was made, only one  
25 witness can be found who can make the required proof, by the sworn  
26 testimony or affidavit of that witness taken in open court, or by  
27 deposition as provided by Subdivision (1), to a signature or the

1 handwriting described by Subdivision (1).

2 (e) A witness being deposed for purposes of proving the will  
3 as provided by Subsection (c) or (d) may testify by referring to a  
4 certified copy of the will, without the judge requiring the  
5 original will to be removed from the court's file and shown to the  
6 witness.

7 SECTION 26. Section 256.154, Estates Code, as effective  
8 January 1, 2014, is amended to read as follows:

9 Sec. 256.154. PROOF OF EXECUTION [~~AUTHORIZED METHODS~~] OF  
10 [~~PROVING~~] HOLOGRAPHIC WILL. (a) A will wholly in the handwriting of  
11 the testator that is not self-proved as provided by this title may  
12 be proved by two witnesses to the testator's handwriting. The  
13 evidence may be by:

14 (1) sworn testimony or affidavit taken in open court;  
15 or

16 (2) if the witnesses are nonresidents of the county or  
17 are residents who are unable to attend court, written or oral  
18 deposition taken in accordance with the provisions of the Texas  
19 Rules of Civil Procedure relating to written or oral depositions  
20 [~~in the same manner and under the same rules as depositions are~~  
21 ~~taken in other civil actions~~].

22 (b) A witness being deposed for purposes of proving the will  
23 as provided by Subsection (a)(2) may testify by referring to a  
24 certified copy of the will, without the judge requiring the  
25 original will to be removed from the court's file and shown to the  
26 witness.

27 SECTION 27. Section 256.155(a), Estates Code, as effective

1 January 1, 2014, is amended to read as follows:

2 (a) This section, rather than Sections 256.153(c) and (d)  
3 and 256.154 regarding the taking of depositions [~~under the same~~  
4 ~~rules as depositions in other civil actions~~], applies if no contest  
5 has been filed with respect to an application for the probate of a  
6 will.

7 SECTION 28. Section 256.156, Estates Code, as effective  
8 January 1, 2014, is amended to read as follows:

9 Sec. 256.156. PROOF OF [~~WRITTEN~~] WILL NOT PRODUCED IN  
10 COURT. (a) A [~~written~~] will that cannot be produced in court must  
11 be proved in the same manner as provided in Section 256.153 for an  
12 attested [~~written~~] will or Section 256.154 for a holographic will,  
13 as applicable. The same amount and character of testimony is  
14 required to prove the [~~written~~] will not produced in court as is  
15 required to prove a [~~written~~] will produced in court.

16 (b) In addition to the proof required by Subsection (a):

17 (1) the cause of the nonproduction of a [~~written~~] will  
18 not produced in court must be proved, which must be sufficient to  
19 satisfy the court that the will cannot by any reasonable diligence  
20 be produced; and

21 (2) the contents of the will must be substantially  
22 proved by the testimony of a credible witness who has read either  
23 the original or a copy of the will, has heard the will read, or can  
24 identify a copy of the will.

25 SECTION 29. Section 256.203, Estates Code, as effective  
26 January 1, 2014, is amended to read as follows:

27 Sec. 256.203. ESTABLISHING CONTENTS OF WILL NOT IN COURT'S

1 CUSTODY. If for any reason a [~~written~~] will is not in the court's  
2 custody, the court shall find the contents of the will by written  
3 order. Certified copies of the contents as established by the  
4 order may be:

- 5 (1) recorded in other counties; and
- 6 (2) used in evidence, as certified copies of [~~written~~]  
7 wills in the custody of the court may be used.

8 SECTION 30. Section 257.052, Estates Code, as effective  
9 January 1, 2014, is amended to read as follows:

10 Sec. 257.052. FILING OF [~~WRITTEN~~] WILL WITH APPLICATION  
11 GENERALLY REQUIRED. (a) An applicant for the probate of a  
12 [~~written~~] will as a muniment of title shall file the will with the  
13 application if the will is in the applicant's control.

14 (b) A will filed under Subsection (a) must remain in the  
15 custody of the county clerk unless removed from the clerk's custody  
16 by court order.

17 SECTION 31. Section 257.053, Estates Code, as effective  
18 January 1, 2014, is amended to read as follows:

19 Sec. 257.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO  
20 [~~WRITTEN~~] WILL IS PRODUCED. In addition to the requirements for an  
21 application under Section 257.051, if an applicant for the probate  
22 of a [~~written~~] will as a muniment of title cannot produce the will  
23 in court, the application must state:

- 24 (1) the reason the will cannot be produced;
- 25 (2) the contents of the will, to the extent known; and
- 26 (3) the name, age, marital status, and address, if  
27 known, and the relationship to the testator, if any, of:

- 1 (A) each devisee;
- 2 (B) each person who would inherit as an heir of
- 3 the testator in the absence of a valid will; and
- 4 (C) in the case of partial intestacy, each heir
- 5 of the testator.

6 SECTION 32. Subchapter D, Chapter 301, Estates Code, as  
7 effective January 1, 2014, is amended by adding Section 301.155 to  
8 read as follows:

9 Sec. 301.155. AUTHORIZED METHODS OF PROOF. A fact  
10 contained in an application for issuance of letters testamentary or  
11 of administration or any other fact required to be proved by this  
12 subchapter may be proved by the sworn testimony of a witness with  
13 personal knowledge of the fact that is:

- 14 (1) taken in open court; or
- 15 (2) if proved under oath to the satisfaction of the
- 16 court that the witness is unavailable, taken by deposition on
- 17 written questions under Rule 200, Texas Rules of Civil Procedure.

18 SECTION 33. Section 305.002(a), Estates Code, as effective  
19 January 1, 2014, is amended to read as follows:

20 (a) A personal representative, other than an executor  
21 described by Subsection (b), is considered to have qualified when  
22 the representative has:

- 23 (1) taken and filed the oath prescribed by Subchapter
- 24 B;
- 25 (2) filed [~~given~~] the required bond with the clerk;
- 26 and
- 27 (3) obtained the judge's approval of the bond [~~and~~

1           ~~[(4) filed the bond with the clerk].~~

2           SECTION 34. Section 305.003, Estates Code, as effective  
3 January 1, 2014, is amended to read as follows:

4           Sec. 305.003. PERIOD FOR TAKING OATH ~~[AND GIVING BOND]~~. (a)  
5 If an executor is named in a will that directs that the executor not  
6 be required to give a bond or security, the [An] oath of the  
7 executor may be taken and subscribed [and a bond may be given and  
8 approved] at any time. An oath taken and subscribed by the executor  
9 before the date of the order granting the letters testamentary is  
10 effective on the date of the order granting the letters.

11           (b) The oath of a personal representative, other than an  
12 executor described by Subsection (a), may be taken and subscribed  
13 at any time after the date of the order granting letters  
14 testamentary or of administration, as applicable.

15           (c) An oath under Subsection (a) or (b) must be taken,  
16 subscribed, and filed before:

17           (1) the 21st day after the date of the order granting  
18 letters testamentary or of administration, as applicable; or

19           (2) the letters testamentary or of administration, as  
20 applicable, are revoked for a failure to qualify within the period  
21 allowed.

22           SECTION 35. Subchapter A, Chapter 305, Estates Code, as  
23 effective January 1, 2014, is amended by adding Section 305.004 to  
24 read as follows:

25           Sec. 305.004. PERIOD FOR GIVING BOND. (a) A bond may be  
26 filed with the clerk at any time before:

27           (1) the 21st day after:

1           (A) the date of the order granting letters  
2 testamentary or of administration, as applicable; or

3           (B) the date of any order modifying the bond  
4 requirement; or

5           (2) the date letters testamentary or of  
6 administration, as applicable, are revoked for a failure to qualify  
7 within the period allowed.

8           (b) The court shall act promptly to review a bond filed as  
9 provided by Subsection (a) and, if acceptable, shall approve the  
10 bond.

11           (c) Notwithstanding Subsection (b), a bond filed with the  
12 clerk within the period prescribed by Subsection (a) is considered  
13 to have been approved by the court following the 21st day after the  
14 bond has been filed, until the court takes action on the bond.

15           (d) A bond that is not filed with the clerk within the period  
16 prescribed by Subsection (a) may still be approved by the court, if  
17 acceptable, but may not be considered approved without action of  
18 the court.

19           SECTION 36. Section 308.054(b), Estates Code, as effective  
20 January 1, 2014, is amended to read as follows:

21           (b) Notice given under Subsection (a) must:

22               (1) expressly state that the creditor must present the  
23 claim before the 121st day [~~within four months~~] after the date of  
24 the receipt of the notice or the claim is barred, if the claim is not  
25 barred by the general statutes of limitation; and

26               (2) include:

27                   (A) the date the letters testamentary or of

1 administration held by the personal representative were issued to  
2 the representative;

3 (B) the address to which the claim may be  
4 presented; and

5 (C) an instruction of the representative's  
6 choice that the claim be addressed in care of:

7 (i) the representative;

8 (ii) the representative's attorney; or

9 (iii) "Representative, Estate of \_\_\_\_\_"

10 (naming the estate).

11 SECTION 37. Section 309.051(a), Estates Code, as effective  
12 January 1, 2014, is amended to read as follows:

13 (a) Except as provided by Subsection (c) or Section 309.056  
14 or unless a longer period is granted by the court, before the 91st  
15 day after the date the personal representative qualifies, the  
16 representative shall prepare and file with the court clerk a single  
17 written instrument that contains a verified, full, and detailed  
18 inventory of all estate property that has come into the  
19 representative's possession or of which the representative has  
20 knowledge. The inventory must:

21 (1) include:

22 (A) all estate real property located in this  
23 state; and

24 (B) all estate personal property regardless of  
25 where the property is located; and

26 (2) specify which portion of the property, if any, is  
27 separate property and which, if any, is community property.

1 SECTION 38. Section 309.056, Estates Code, as effective  
2 January 1, 2014, is amended by amending Subsection (b) and adding  
3 Subsection (d) to read as follows:

4 (b) Notwithstanding Sections 309.051 and 309.052, or any  
5 contrary provision in a decedent's will that does not specifically  
6 prohibit the filing of an affidavit described by this subsection,  
7 if there are no unpaid debts, except for secured debts, taxes, and  
8 administration expenses, at the time the inventory is due,  
9 including any extensions, an independent executor may file with the  
10 court clerk, in lieu of the inventory, appraisement, and list of  
11 claims, an affidavit stating that all debts, except for secured  
12 debts, taxes, and administration expenses, are paid and that all  
13 beneficiaries have received a verified, full, and detailed  
14 inventory and appraisement. The affidavit in lieu of the  
15 inventory, appraisement, and list of claims must be filed within  
16 the 90-day period prescribed by Section 309.051(a), unless the  
17 court grants an extension.

18 (d) An independent executor is not liable to any person for  
19 filing:

20 (1) an affidavit under this section in lieu of filing  
21 an inventory, appraisement, and list of claims, if permitted by  
22 law; or

23 (2) an inventory, appraisement, and list of claims in  
24 lieu of filing an affidavit under this section.

25 SECTION 39. Sections 309.103(a) and (b), Estates Code, as  
26 effective January 1, 2014, are amended to read as follows:

27 (a) Any interested person who considers an inventory,

1 appraisalment, or list of claims or an affidavit in lieu of the  
2 inventory, appraisalment, and list of claims [~~filed for the estate~~]  
3 to be erroneous or unjust in any particular may:

4 (1) file a written complaint setting forth the alleged  
5 erroneous or unjust item; and

6 (2) have the personal representative cited to appear  
7 before the court and show cause why the item should not be  
8 corrected.

9 (b) On the hearing of the complaint, if the court is  
10 satisfied from the evidence that the inventory, appraisalment, or  
11 list of claims or an affidavit in lieu of the inventory,  
12 appraisalment, and list of claims is erroneous or unjust as alleged  
13 in the complaint, the court shall enter an order:

14 (1) specifying the erroneous or unjust item and the  
15 corrections to be made; and

16 (2) if the complaint relates to an inventory,  
17 appraisalment, or list of claims, appointing appraisers to make a  
18 new appraisalment correcting the erroneous or unjust item and  
19 requiring the filing of the new appraisalment before the 21st day  
20 after the date of the order.

21 SECTION 40. Section 353.101(d), Estates Code, as effective  
22 January 1, 2014, is amended to read as follows:

23 (d) A family allowance may not be made for:

24 (1) the decedent's surviving spouse, if the surviving  
25 spouse has separate property adequate for the surviving spouse's  
26 maintenance;

27 (2) the decedent's minor children, if the minor

1 children have property in their own right adequate for the  
2 children's maintenance; or

3 (3) any of the decedent's adult incapacitated  
4 children, if:

5 (A) the adult incapacitated child has property in  
6 the person's own right adequate for the person's maintenance; or

7 (B) at the time of the decedent's death, the  
8 decedent was not supporting the adult incapacitated child.

9 SECTION 41. Section 355.060, Estates Code, as effective  
10 January 1, 2014, is amended to read as follows:

11 Sec. 355.060. UNSECURED CLAIMS BARRED UNDER CERTAIN  
12 CIRCUMSTANCES. If a personal representative gives a notice  
13 permitted by Section 308.054 to an unsecured creditor for money and  
14 the creditor's claim is not presented before the 121st day [~~within~~  
15 ~~four months~~] after the date of receipt of the notice, the claim is  
16 barred.

17 SECTION 42. Section 361.155, Estates Code, as effective  
18 January 1, 2014, is amended by amending Subsection (b) and adding  
19 Subsection (c) to read as follows:

20 (b) Except as otherwise provided by this subsection, an  
21 appointee who files an inventory, appraisal, and list of claims  
22 under Subsection (a) shall set out in the inventory the appointee's  
23 appraisal of the fair market value of each item in the inventory  
24 on the date of the appointee's qualification. If an inventory,  
25 appraisal, and list of claims have not been filed by any former  
26 personal representative, the appointee shall set out the inventory  
27 as provided by Section 309.051(b).

1        (c) On the application of any person interested in the  
2 estate, the court shall, in an order appointing a successor  
3 representative of an estate, appoint appraisers as in an original  
4 appointment.

5        SECTION 43. Section 362.011, Estates Code, as effective  
6 January 1, 2014, is amended to read as follows:

7        Sec. 362.011. PARTITION AND DISTRIBUTION OF ESTATE; DEPOSIT  
8 IN COURT'S REGISTRY. (a) If, on final settlement of an estate, any  
9 of the estate remains in the personal representative's possession,  
10 the court shall order that a partition and distribution be made  
11 among the persons entitled to receive that part of the estate.

12        (b) The court shall order the personal representative to  
13 convert any remaining nonmonetary assets distributable to an  
14 unknown or missing person into cash to be deposited into the court's  
15 registry. The procedures in Chapter 356 apply to the conversion of  
16 nonmonetary assets under this subsection.

17        SECTION 44. Section 362.013, Estates Code, as effective  
18 January 1, 2014, is amended to read as follows:

19        Sec. 362.013. DISCHARGE OF PERSONAL REPRESENTATIVE WHEN  
20 ESTATE FULLY ADMINISTERED. The court shall enter an order  
21 discharging a personal representative from the representative's  
22 trust and declaring the estate closed when:

23                (1) the representative has fully administered the  
24 estate in accordance with this title and the court's orders;

25                (2) the representative's account for final settlement  
26 has been approved; and

27                (3) the representative has :

1           (A) delivered all of the estate remaining in the  
2 representative's possession to the person or persons entitled to  
3 receive that part of the estate;and

4           (B) with respect to the portion of the estate  
5 distributable to an unknown or missing person, complied with an  
6 order of the court under Section 362.011.

7           SECTION 45. Section 401.001(a), Estates Code, as effective  
8 January 1, 2014, is amended to read as follows:

9           (a) Any person capable of making a will may provide in the  
10 person's will that no other action shall be had in the probate court  
11 in relation to the settlement of the person's estate than the  
12 probating and recording of the will and the return of any required  
13 ~~an~~ inventory, appraisement, and list of claims of the person's  
14 estate.

15           SECTION 46. Section 401.004(d), Estates Code, as effective  
16 January 1, 2014, is amended to read as follows:

17           (d) If a trust is created in the decedent's will or if the  
18 decedent's will devises property to a trustee as described by  
19 Section 254.001, the person or class of persons entitled to receive  
20 property outright from the trust on the decedent's death and those  
21 first eligible to receive the income from the trust, when  
22 determined as if the trust were to be in existence on the date of the  
23 decedent's death, shall, for the purposes of Section 401.002, be  
24 considered to be the distributee or distributees on behalf of the  
25 trust, and any other trust or trusts coming into existence on the  
26 termination of the trust, and are authorized to apply for  
27 independent administration on behalf of the trusts without the

1 consent or agreement of the trustee or any other beneficiary of the  
2 trust, or the trustee or any beneficiary of any other trust which  
3 may come into existence on the termination of the trust. If a trust  
4 beneficiary who is considered to be a distributee under this  
5 subsection is an incapacitated person, the trustee or cotrustee may  
6 file the application or give the consent, provided that the trustee  
7 or cotrustee is not the person proposed to serve as the independent  
8 executor.

9 SECTION 47. Section 401.006, Estates Code, as effective  
10 January 1, 2014, is amended to read as follows:

11 Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. In a  
12 situation in which a decedent does not have a will, or a decedent's  
13 will does not contain language authorizing the personal  
14 representative to sell [~~real~~] property or contains language that is  
15 not sufficient to grant the representative that authority, the  
16 court may include in an order appointing an independent executor  
17 under Section 401.002 or 401.003 any general or specific authority  
18 regarding the power of the independent executor to sell [~~real~~]  
19 property that may be consented to by the beneficiaries who are to  
20 receive any interest in the [~~real~~] property in the application for  
21 independent administration or in their consents to the independent  
22 administration. The independent executor, in such event, may sell  
23 the [~~real~~] property under the authority granted in the court order  
24 without the further consent of those beneficiaries.

25 SECTION 48. Section 403.055, Estates Code, as effective  
26 January 1, 2014, is amended to read as follows:

27 Sec. 403.055. CERTAIN UNSECURED CLAIMS; BARRING OF CLAIMS.

1 An unsecured creditor who has a claim for money against an estate  
2 and who receives a notice under Section 308.054 shall give to the  
3 independent executor notice of the nature and amount of the claim  
4 before the 121st [~~not later than the 120th~~] day after the date the  
5 notice is received or the claim is barred.

6 SECTION 49. Section 403.056(a), Estates Code, as effective  
7 January 1, 2014, is amended to read as follows:

8 (a) Notice to the independent executor required by Sections  
9 403.052 and 403.055 must be contained in:

10 (1) a written instrument in the form required by  
11 Section 355.004 that is hand-delivered with proof of receipt, or  
12 mailed by certified mail, return receipt requested with proof of  
13 receipt, to the independent executor or the executor's attorney;

14 (2) a pleading filed in a lawsuit with respect to the  
15 claim; or

16 (3) a written instrument in the form required by  
17 Section 355.004 or pleading filed in the court in which the  
18 administration of the estate is pending.

19 SECTION 50. Section 404.001(a), Estates Code, as effective  
20 January 1, 2014, is amended to read as follows:

21 (a) At any time after the expiration of 15 months after the  
22 date that the court clerk first issues letters testamentary or of  
23 administration to any personal representative of an estate [~~an~~  
24 ~~independent administration was created and the order appointing an~~  
25 ~~independent executor was entered by the probate court~~], any person  
26 interested in the estate may demand an accounting from the  
27 independent executor. The independent executor shall furnish to

1 the person or persons making the demand an exhibit in writing, sworn  
2 and subscribed by the independent executor, setting forth in  
3 detail:

4 (1) the property belonging to the estate that has come  
5 into the executor's possession as executor;

6 (2) the disposition that has been made of the property  
7 described by Subdivision (1);

8 (3) the debts that have been paid;

9 (4) the debts and expenses, if any, still owing by the  
10 estate;

11 (5) the property of the estate, if any, still  
12 remaining in the executor's possession;

13 (6) other facts as may be necessary to a full and  
14 definite understanding of the exact condition of the estate; and

15 (7) the facts, if any, that show why the  
16 administration should not be closed and the estate distributed.

17 SECTION 51. Chapter 404, Estates Code, as effective January  
18 1, 2014, is amended by amending Section 404.003 and adding Sections  
19 404.0035, 404.0036, and 404.0037 to read as follows:

20 Sec. 404.003. REMOVAL OF INDEPENDENT EXECUTOR WITHOUT  
21 NOTICE. The probate court, on the court's own motion or on the  
22 motion of any interested person, and without notice, may remove an  
23 independent executor appointed under this subtitle when:

24 (1) the independent executor cannot be served with  
25 notice or other processes because:

26 (A) the independent executor's whereabouts are  
27 unknown;

1                   (B) the independent executor is eluding service;

2 or

3                   (C) the independent executor is a nonresident of

4 this state without a designated resident agent; or

5                   (2) sufficient grounds appear to support a belief that

6 the independent executor has misapplied or embezzled, or is about

7 to misapply or embezzle, all or part of the property committed to

8 the independent executor's care.

9                   Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE.

10 (a) The probate court, on the court's own motion, may remove an

11 independent executor appointed under this subtitle after providing

12 30 days' written notice of the court's intent to remove the

13 independent executor, by certified mail, return receipt requested,

14 to the independent executor's last known address and to the last

15 known address of the independent executor's attorney of record, if

16 the independent executor:

17                   (1) neglects to qualify in the manner and time

18 required by law; or

19                   (2) fails to return, before the 91st day after the date

20 the independent executor qualifies, either an inventory of the

21 estate property and a list of claims that have come to the

22 independent executor's knowledge or an affidavit in lieu of the

23 inventory, appraisement, and list of claims, unless that deadline

24 is extended by court order.

25                   (b) The probate court, on its own motion or on motion of any

26 interested person, after the independent executor has been cited by

27 personal service to answer at a time and place fixed in the notice,

1 may remove an independent executor when:

2           (1) ~~[the independent executor fails to return within~~  
3 ~~90 days after qualification, unless such time is extended by order~~  
4 ~~of the court, either an inventory of the property of the estate and~~  
5 ~~list of claims that have come to the independent executor's~~  
6 ~~knowledge or an affidavit in lieu of the inventory, appraisement,~~  
7 ~~and list of claims,~~

8           ~~[(2) sufficient grounds appear to support belief that~~  
9 ~~the independent executor has misapplied or embezzled, or that the~~  
10 ~~independent executor is about to misapply or embezzle, all or any~~  
11 ~~part of the property committed to the independent executor's care,~~

12           ~~[(3)]~~ the independent executor fails to make an  
13 accounting which is required by law to be made;

14           (2) ~~[(4)]~~ the independent executor fails to timely  
15 file the affidavit or certificate required by Section 308.004;

16           (3) ~~[(5)]~~ the independent executor is proved to have  
17 been guilty of gross misconduct or gross mismanagement in the  
18 performance of the independent executor's duties;

19           (4) ~~[(6)]~~ the independent executor becomes an  
20 incapacitated person, or is sentenced to the penitentiary, or from  
21 any other cause becomes legally incapacitated from properly  
22 performing the independent executor's fiduciary duties; or

23           (5) ~~[(7)]~~ the independent executor becomes incapable  
24 of properly performing the independent executor's fiduciary duties  
25 due to a material conflict of interest.

26           Sec. 404.0036. REMOVAL ORDER. (a) ~~[(b)]~~ The order of  
27 removal of an independent executor shall state the cause of removal

1 and shall direct by order the disposition of the assets remaining in  
2 the name or under the control of the removed independent  
3 executor. The order of removal shall require that letters issued  
4 to the removed independent executor shall be surrendered and that  
5 all letters shall be canceled of record.

6 (b) If an independent executor is removed by the court under  
7 Section 404.003 or 404.0035 [~~this section~~], the court may, on  
8 application, appoint a successor independent executor as provided  
9 by Section 404.005.

10 Sec. 404.0037. COSTS AND EXPENSES RELATED TO REMOVAL OF  
11 INDEPENDENT EXECUTOR. (a) [~~(c)~~] An independent executor who  
12 defends an action for the independent executor's removal in good  
13 faith, whether successful or not, shall be allowed out of the estate  
14 the independent executor's necessary expenses and disbursements,  
15 including reasonable attorney's fees, in the removal proceedings.

16 (b) [~~(d)~~] Costs and expenses incurred by the party seeking  
17 removal that are incident to removal of an independent executor  
18 appointed without bond, including reasonable attorney's fees and  
19 expenses, may be paid out of the estate.

20 SECTION 52. Sections 404.005(b) and (c), Estates Code, as  
21 effective January 1, 2014, are amended to read as follows:

22 (b) Except as otherwise provided by this subsection, if [~~if~~]  
23 a distributee described in this section is an incapacitated person,  
24 the guardian of the person of the distributee may sign the  
25 application on behalf of the distributee. If the probate court  
26 finds that either the continuing of independent administration or  
27 the appointment of the person, firm, or corporation designated in

1 the application as successor independent executor would not be in  
2 the best interest of the incapacitated person, then,  
3 notwithstanding Subsection (a), the court may not enter an order  
4 continuing independent administration of the estate. If the  
5 distributee is an incapacitated person and has no guardian of the  
6 person, the court may appoint a guardian ad litem to make  
7 application on behalf of the incapacitated person if the probate  
8 court considers such an appointment necessary to protect the  
9 interest of that distributee. If a distributee described in this  
10 section is a minor and has no guardian of the person, a natural  
11 guardian of the minor may sign the application for the order  
12 continuing independent administration on the minor's behalf unless  
13 a conflict of interest exists between the minor and the natural  
14 guardian.

15 (c) Except as otherwise provided by this subsection, if [~~if~~  
16 a trust is created in the decedent's will or if the decedent's will  
17 devises property to a trustee as described by Section 254.001, the  
18 person or class of persons entitled to receive property outright  
19 from the trust on the decedent's death and those first eligible to  
20 receive the income from the trust, determined as if the trust were  
21 to be in existence on the date of the filing of the application for  
22 an order continuing independent administration, shall, for the  
23 purposes of this section, be considered to be the distributee or  
24 distributees on behalf of the trust, and any other trust or trusts  
25 coming into existence on the termination of the trust, and are  
26 authorized to apply for an order continuing independent  
27 administration on behalf of the trust without the consent or

1 agreement of the trustee or any other beneficiary of the trust, or  
2 the trustee or any beneficiary of any other trust which may come  
3 into existence on the termination of the trust. If a person  
4 considered to be a distributee under this subsection is an  
5 incapacitated person, the trustee or cotrustee may apply for the  
6 order continuing independent administration or sign the  
7 application on the incapacitated person's behalf if the trustee or  
8 cotrustee is not the person proposed to serve as the independent  
9 executor.

10 SECTION 53. Section 405.001(b), Estates Code, as effective  
11 January 1, 2014, is amended to read as follows:

12 (b) On receipt of the accounting and, after notice to the  
13 independent executor and a hearing, unless the court finds a  
14 continued necessity for administration of the estate, the court  
15 shall order its distribution by the independent executor to the  
16 distributees entitled to the property. If the court finds there is  
17 a continued necessity for administration of the estate, the court  
18 shall order the distribution of any portion of the estate that the  
19 court finds should not be subject to further administration by the  
20 independent executor. If any portion of the estate that is ordered  
21 to be distributed is incapable of distribution without prior  
22 partition or sale, the court may:

23 (1) [~~shall~~] order partition and distribution, or sale,  
24 in the manner provided for the partition and distribution of  
25 property incapable of division in supervised estates; or

26 (2) order distribution of that portion of the estate  
27 incapable of distribution without prior partition or sale in

1 undivided interests.

2 SECTION 54. Section 122.057, Estates Code, as effective  
3 January 1, 2014, is repealed.

4 SECTION 55. (a) The changes in law made by Section 111.051,  
5 Estates Code, as amended by this Act, and Section 111.054, Estates  
6 Code, as added by this Act, represent the fundamental policy of this  
7 state for the protection of its residents and are intended to  
8 prevail over the laws of another state or jurisdiction, to the  
9 extent those laws are in conflict with Texas law.

10 (b) The changes in law made by Section 111.051, Estates  
11 Code, as amended by this Act, and Section 111.054, Estates Code, as  
12 added by this Act, apply to an account at a financial institution,  
13 an insurance contract, an annuity contract, a retirement account, a  
14 beneficiary designation, or another similar arrangement of a person  
15 who dies on or after the effective date of this Act.

16 SECTION 56. (a) Section 21.005(b), Estates Code, as added  
17 by this Act, applies only to a will executed on or after the  
18 effective date of this Act. A will executed before the effective  
19 date of this Act is governed by the law in effect on the date the  
20 will was executed, and the former law is continued in effect for  
21 that purpose.

22 (b) The changes in law made by Sections 32.006, 256.052,  
23 256.053, 256.054, 256.152(c), 256.153, 256.154, 256.155(a),  
24 256.156, 256.203, 257.052, 257.053, 401.001(a), 401.004(d), and  
25 401.006, Estates Code, as amended by this Act, apply only to an  
26 action filed or other proceeding commenced on or after the  
27 effective date of this Act. An action filed or other proceeding

1 commenced before the effective date of this Act is governed by the  
2 law in effect on the date the action was filed or the proceeding was  
3 commenced, and the former law is continued in effect for that  
4 purpose.

5 (c) The changes in law made by Sections 51.203(c), 53.104,  
6 305.002(a), 305.003, 308.054(b), 309.051(a), 309.056, 309.103(a)  
7 and (b), 355.060, 361.155(b), 362.011, 362.013, 404.001, 404.003,  
8 404.005(b) and (c), and 405.001(b), Estates Code, as amended by  
9 this Act, and Sections 253.001(c), 301.155, 305.004, 361.155(c),  
10 404.0035, 404.0036, and 404.0037, Estates Code, as added by this  
11 Act, apply to the administration of the estate of a decedent that is  
12 pending or commenced on or after the effective date of this Act.

13 (d) The changes in law made by Sections 102.004, 201.001(f)  
14 and (g), 201.051, 201.052(b), 202.004, 202.009, 202.056, 202.151,  
15 353.101(d), 403.055, and 403.056(a), Estates Code, as amended by  
16 this Act, and Sections 201.001(i), (j), and (k), 201.052(a-1),  
17 202.0025, and 202.057, Estates Code, as added by this Act, apply  
18 only to the estate of a decedent who dies on or after the effective  
19 date of this Act. The estate of a decedent who dies before the  
20 effective date of this Act is governed by the law in effect on the  
21 date of the decedent's death, and the former law is continued in  
22 effect for that purpose.

23 (e) Section 202.0025, Estates Code, as added by this Act, is  
24 intended to clarify current law in regard to the commencement of  
25 proceedings to declare heirship, and an inference may not be made  
26 regarding the statute of limitations for a proceeding to declare  
27 heirship filed before the effective date of this Act.

1           (f) An inference may not be made from the changes in law made  
2 by this Act to Section 401.006, Estates Code, as to whether an  
3 independent executor had the authority to sell personal property of  
4 the estate in a probate proceeding filed before the effective date  
5 of this Act.

6           SECTION 57. To the extent of any conflict, this Act prevails  
7 over another Act of the 83rd Legislature, Regular Session, 2013,  
8 relating to nonsubstantive additions to and corrections in enacted  
9 codes.

10          SECTION 58. This Act takes effect January 1, 2014.